

INADVERTENT EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by: Kate Anderson

1) Project (e.g. covered action): California WaterFix

2) Date and time of receipt of communication: 11:32 am., August 30, 2018

3) Location and means of communication: Oral, on tour bus outside of Locke, CA

4) Identity of person(s) initiating communication: Erik Vink, Executive Director, Delta Protection Commission

5) Identity of person(s) on whose behalf communication was made: N/A

6) Identity of persons(s) receiving communication: Council staff members Keith Coolidge, Kate Anderson, Andrew Schwarz, and Ron Melcer

7) Identity of all person(s) present during the communication: Additional unknown tour participants from the Climate Adaptation Forum

Describe the substance of the communication and any response (use extra pages if necessary; attach copies of any written communications and materials presented): As we were driving the River Road north of Locke, a tour participant asked what the signs along the road meant reading "Stop the Tunnels." Mr. Vink, who was providing an overview of the history of Locke, said that the signs protested "two really large tunnels that would take water from the Delta and the construction would have devastating effect on Delta communities." Keith interrupted and said that given Council staff ex parte restrictions, the discussion should not continue and suggested if there was interest to discuss California WaterFix, Mr. Vink could do that when Council staff were not present.

9/6/2018
Date

Kate Anderson
Signature

PURPOSE OF DISCLOSURE FORM: The Delta Stewardship Council's Administrative Procedures Governing Appeals require members to avoid ex parte communications while an appeal is pending. If members nevertheless receive one, the member needs to notify the Council's Chief Counsel or Executive Officer so that they may take appropriate measures (see para. 27).

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Council's Chief Counsel and Executive Officer immediately following receipt of the communication.

INADVERTENT EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by: Keith Coolidge

1) Project (e.g. covered action): California WaterFix

2) Date and time of receipt of communication: 11:32 a.m., August 30, 2018

3) Location and means of communication: Oral, on tour bus outside of Locke, CA

4) Identity of person(s) initiating communication: Erik Vink, Executive Director, Delta Protection Commission

5) Identity of person(s) on whose behalf communication was made: N/A

6) Identity of persons(s) receiving communication: Council staff members Keith Coolidge, Kate Anderson, Andrew Schwartz and Ron Melcer

7) Identity of all person(s) present during the communication: Additional unknown tour participants from the Climate Adaptation Forum

Describe the substance of the communication and any response (use extra pages if necessary; attach copies of any written communications and materials presented):

While driving the River Road north of the Town of Locke, a tour participant asked the meaning of roadside signs reading "Stop the Tunnels". Mr. Vink, who was at the time describing the history of Locke, said that they were protesting "two really large tunnels that would take water from the Delta and that the construction would have devastating effect on Delta communities." I interjected that that was probably not something that Council staff could hear given our ex parte restrictions, but that we would find time later in the tour when – out of our presence – he could discuss California WaterFix.

9/6/2018

Date


Signature

PURPOSE OF DISCLOSURE FORM: The Delta Stewardship Council's Administrative Procedures Governing Appeals require members to avoid ex parte communications while an appeal is pending. If members nevertheless receive one, the member needs to notify the Council's Chief Counsel or Executive Officer so that they may take appropriate measures (see para. 27).

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Council's Chief Counsel and Executive Officer immediately following receipt of the communication.

INADVERTENT EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by: *Jeff Henderson*

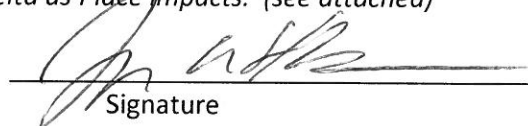
- 1) Project (e.g. covered action): *California WaterFix*
- 2) Date and time of receipt of communication: *August 28, 2018*
- 3) Location and means of communication: *Unsolicited email communication*
- 4) Identity of person(s) initiating communication: *Mark Pruner*
- 5) Identity of person(s) on whose behalf communication was made: *Mark Pruner*
- 6) Identity of persons(s) receiving communication: *Randy Fiorini. Communication forwarded by Randy Fiorini to Jessica Pearson and Dan Constable. Communication forwarded by Dan Constable to Andrew Tauriainen, Bethany Pane, Jeff Henderson.*
- 7) Identity of all person(s) present during the communication: *See #6 above.*

Describe the substance of the communication and any response (use extra pages if necessary; attach copies of any written communications and materials presented):

Comments offered by Mr. Pruner indicating that the California WaterFix project is inconsistent with the coequal goals due to Delta as Place Impacts. (see attached)

August 31, 2018

Date


Signature

PURPOSE OF DISCLOSURE FORM: The Delta Stewardship Council's Administrative Procedures Governing Appeals require members to avoid ex parte communications while an appeal is pending. If members nevertheless receive one, the member needs to notify the Council's Chief Counsel or Executive Officer so that they may take appropriate measures (see para. 27).

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Council's Chief Counsel and Executive Officer immediately following receipt of the communication.

Henderson, Jeff@DeltaCouncil

From: Constable, Daniel@DeltaCouncil
Sent: Tuesday, August 28, 2018 8:53 AM
To: Tauriainen, Andrew@DeltaCouncil; Pane, Bethany@DeltaCouncil
Cc: Henderson, Jeff@DeltaCouncil
Subject: Attorney-Client Communication / Attorney Work Product: FW: Comment to

Attorney-Client Communication / Attorney Work Product

Andrew and Bethany,

Please see below, comment from Mark Pruner.

Dan

From: Fiorini, Randy@DeltaCouncil
Sent: Monday, August 27, 2018 9:20 PM
To: Pearson, Jessica@DeltaCouncil <Jessica.Pearson@deltacouncil.ca.gov>; Constable, Daniel@DeltaCouncil <Daniel.Constable@deltacouncil.ca.gov>
Subject: Fwd: Comment to

Just received this

Randy Fiorini,
Chairman
Delta Stewardship Council
980 Ninth St, suite 1500
Sacramento, CA 95814

(916) 320-7210 cell
randy.fiorini@deltacouncil.ca.gov



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Begin forwarded message:

From: Mark Pruner <mpruner@prunerlaw.com>
Date: August 27, 2018 at 8:16:40 PM PDT

To: "randall.fiorini@deltacouncil.ca.gov" <randall.fiorini@deltacouncil.ca.gov>

Subject: Comment to

Mr. Fiorini,

On this the last day to make comment to the WaterFix consistency determination, my comments are as follows, specifically focusing on the section titled "California WaterFix and the Coequal Goals", 9 pages in length, dated July 2018 (the "**WaterFix and Coequal Goals Chapter**").

Water Code § 85054, the very section that defines the "coequal goals", the section that should be the heart of the analysis of the WaterFix and Coequal Goals Chapter, is nowhere mentioned in WaterFix and Coequal Goals Chapter. Water Code § 85054 states:

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

DWR states in the last full paragraph on page 4 of the WaterFix and Coequal Goals Chapter that "California WaterFix, by itself, *may not sufficiently* protect and enhance the unique cultural, recreational, and agricultural value of the Delta as an evolving place..." (Emphasis added.) (Page 4, last paragraph, lines 2 – 4, WaterFix and Coequal Goals Chapter.) DWR goes on to state it has conducted meetings and has "*done its best* to minimize and mitigate adverse effects on cultural, recreational and agricultural values." (Emphasis added.) (Page 4, last paragraph, lines 5-6, WaterFix and Coequal Goals Chapter.)

It bears noting that DWR's analysis quoted above fails entirely to acknowledge the natural resource values of the Delta.

DWR misses the meaning of the law. Section 85054 does not state that DWR must do "its best". DWR's best efforts are not what is required by law. DWR is commanded to proceed only in a manner which protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. This it has not done, and so admits.

DWR states as part of its analysis that it is up to other projects and to persons and entities other than DWR to "contribute to the achievement of these particular statutory goals." Clearly the law does not give DWR any such pass on complying with California law.

Section 85054 does not give a pass to DWR for WaterFix, or any other project, from the requirements that in constructing the project DWR meet the coequal goals by protecting and enhancing the unique cultural, recreational, and agricultural value of the Delta as an evolving place. DWR has admitted that it has failed to abide by the Section 85054, which is the heart of the 2009 legislation upon which DWR now relies.

Thank you for your receipt of this comment.

Mark A. Pruner
P. O. Box 1
Clarksburg, CA 95612
Tel. (916) 744-1500
Fax. (916) 744-1502

INADVERTENT EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by: Daniel Constable

1) Project (e.g. covered action): California WaterFix (certification of consistency (#C20185))

2) Date and time of receipt of communication: Monday, August 27, 2018 9:20 PM

3) Location and means of communication: Email

4) Identity of person(s) initiating communication: Randy Fiorini

5) Identity of person(s) on whose behalf communication was made: Mark Pruner

6) Identity of persons(s) receiving communication: Daniel Constable, Jessica Pearson, Randy Fiorini, Bethany Pane, Andrew Tauriainen, Jeff Henderson

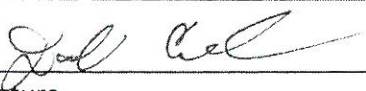
7) Identity of all person(s) present during the communication: Received via email (Daniel Constable, Jessica Pearson, Randy Fiorini; Bethany Pane, Andrew Tauriainen, Jeff Henderson)

Describe the substance of the communication and any response (use extra pages if necessary; attach copies of any written communications and materials presented):

An email was forwarded by Council Chair, Randy Fiorini, relaying comments received by Mark Pruner, a resident of Clarksburg, California. It appears that Mr. Pruner intended to provide comments on the WaterFix certification of consistency. This certification of consistency was in the appeals period when the comments were received, and Council staff are currently under ex parte communication restrictions. The nature of the comments appear to focus on the certification of consistency's treatment of Delta Plan Policy G P1(b)(1), which describes overall consistency with the coequal goals. The following morning (August 28, 2018) I forwarded this message to three staff at the Delta Stewardship Council: Bethany Pane (Chief Counsel), Andrew Tauriainen (Attorney IV), and Jeff Henderson (Deputy Executive Officer, Planning and Performance Division). I forwarded it with the intent of asking what to do with such a communication, and had forgotten that this is an ex parte communication.

31 August 2018

Date


Signature

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TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Council's Chief Counsel and Executive Officer immediately following receipt of the communication.

Constable, Daniel@DeltaCouncil

From: Fiorini, Randy@DeltaCouncil
Sent: Monday, August 27, 2018 9:20 PM
To: Pearson, Jessica@DeltaCouncil; Constable, Daniel@DeltaCouncil
Subject: Fwd: Comment to

Just received this

Randy Fiorini,
Chairman
Delta Stewardship Council
980 Ninth St, suite 1500
Sacramento, CA 95814

(916) 320-7210 cell
randy.fiorini@deltacouncil.ca.gov



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Begin forwarded message:

From: Mark Pruner <mpruner@prunerlaw.com>
Date: August 27, 2018 at 8:16:40 PM PDT
To: "randall.fiorini@deltacouncil.ca.gov" <randall.fiorini@deltacouncil.ca.gov>
Subject: Comment to

Mr. Fiorini,

On this the last day to make comment to the WaterFix consistency determination, my comments are as follows, specifically focusing on the section titled "California WaterFix and the Coequal Goals", 9 pages in length, dated July 2018 (the "**WaterFix and Coequal Goals Chapter**").

Water Code § 85054, the very section that defines the "coequal goals", the section that should be the heart of the analysis of the WaterFix and Coequal Goals Chapter, is nowhere mentioned in WaterFix and Coequal Goals Chapter. Water Code § 85054 states:

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique

cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

DWR states in the last full paragraph on page 4 of the WaterFix and Coequal Goals Chapter that "California WaterFix, by itself, *may not sufficiently* protect and enhance the unique cultural, recreational, and agricultural value of the Delta as an evolving place..." (Emphasis added.) (Page 4, last paragraph, lines 2 – 4, WaterFix and Coequal Goals Chapter.) DWR goes on to state it has conducted meetings and has "*done its best* to minimize and mitigate adverse effects on cultural, recreational and agricultural values." (Emphasis added.) (Page 4, last paragraph, lines 5-6, WaterFix and Coequal Goals Chapter.)

It bears noting that DWR's analysis quoted above fails entirely to acknowledge the natural resource values of the Delta.

DWR misses the meaning of the law. Section 85054 does not state that DWR must do "its best". DWR's best efforts are not what is required by law. DWR is commanded to proceed only in a manner which protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. This is has not done, and so admits.

DWR states as part of its analysis that it is up to other projects and to persons and entities other than DWR to "contribute to the achievement of these particular statutory goals." Clearly the law does not give DWR any such pass on complying with California law.

Section 85054 does not give a pass to DWR for WaterFix, or any other project, from the requirements that in constructing the project DWR meet the coequal goals by protecting and enhancing the unique cultural, recreational, and agricultural value of the Delta as an evolving place. DWR has admitted that it has failed to abide by the Section 85054, which is the heart of the 2009 legislation upon which DWR now relies.

Thank you for your receipt of this comment.

Mark A. Pruner
P. O. Box 1
Clarksburg, CA 95612
Tel. (916) 744-1500
Fax. (916) 744-1502

INADVERTENT EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by: Randy Fiorini

1) Project (e.g. covered action): Water Fix

2) Date and time of receipt of communication: Aug 27, 2018 @ 8:16 PM

3) Location and means of communication: email

4) Identity of person(s) initiating communication: Mark Bruner

5) Identity of person(s) on whose behalf communication was made: N/A

6) Identity of persons(s) receiving communication: Randy Fiorini
forwarded to Daniel Constable + Jessica Pearson

7) Identity of all person(s) present during the communication: N/A

Describe the substance of the communication and any response (use extra pages if necessary; attach copies of any written communications and materials presented):

I received an email from Mark Bruner a few
hours before the appeal deadline. Not sure if
the email constituted an appeal I forwarded
it to staff via email

Sept 4, 2018 RF Fiorini
Date Signature

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Tauriainen, Andrew@DeltaCouncil

From: Pearson, Jessica@DeltaCouncil
Sent: Tuesday, August 28, 2018 7:41 AM
To: Pane, Bethany@DeltaCouncil; Tauriainen, Andrew@DeltaCouncil
Cc: Fiorini, Randy@DeltaCouncil
Subject: Fwd: Comment to

Begin forwarded message:

From: "Fiorini, Randy@DeltaCouncil" <Randall.Fiorini@deltacouncil.ca.gov>
Date: August 27, 2018 at 9:53:47 PM PDT
To: Mark Pruner <mpruner@prunerlaw.com>
Cc: "Pearson, Jessica@DeltaCouncil" <Jessica.Pearson@deltacouncil.ca.gov>
Subject: Re: Comment to

Mark

I have received your comment letter and have passed it on to our staff. Thank you for your submission.

Randy Fiorini,
Chairman
Delta Stewardship Council
980 Ninth St, suite 1500
Sacramento, CA 95814

(916) 320-7210 cell
randy.fiorini@deltacouncil.ca.gov



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On Aug 27, 2018, at 8:16 PM, Mark Pruner <mpruner@prunerlaw.com> wrote:

Mr. Fiorini,

On this the last day to make comment to the WaterFix consistency determination, my comments are as follows, specifically focusing on the section titled "California WaterFix

and the Coequal Goals”, 9 pages in length, dated July 2018 (the “**WaterFix and Coequal Goals Chapter**”).

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DWR states as part of its analysis that it is up to other projects and to persons and entities other than DWR to “contribute to the achievement of these particular statutory goals.” Clearly the law does not give DWR any such pass on complying with California law.

Section 85054 does not give a pass to DWR for WaterFix, or any other project, from the requirements that in constructing the project DWR meet the coequal goals by protecting and enhancing the unique cultural, recreational, and agricultural value of the Delta as an evolving place. DWR has admitted that it has failed to abide by the Section 85054, which is the heart of the 2009 legislation upon which DWR now relies.

Thank you for your receipt of this comment.

Mark A. Pruner
P. O. Box 1
Clarksburg, CA 95612
Tel. (916) 744-1500
Fax. (916) 744-1502

INADVERTENT EX PARTE COMMUNICATION DISCLOSURE FORM

- Filed by: SKIP THOMSON
- 1) Project (e.g. covered action): CA Watertix
- 2) Date and time of receipt of communication: August 10, 2018 6:04 PM
- 3) Location and means of communication: Solano County email
- 4) Identity of person(s) initiating communication: Dennis W. Bunting - Solano County Counsel
- 5) Identity of person(s) on whose behalf communication was made: Solano County Counsel's Office
- 6) Identity of persons(s) receiving communication: Solano County Supervisor Skip Thomson & Delta Stewardship Council member
- 7) Identity of all person(s) present during the communication: Skip Thomson

Describe the substance of the communication and any response (use extra pages if necessary; attach copies of any written communications and materials presented):

I was on vacation from July 19 thru Aug 16.
While on vacation I received this email.
I did not open the attachment.

8/27/18
Date

[Signature]
Signature

PURPOSE OF DISCLOSURE FORM: The Delta Stewardship Council's Administrative Procedures Governing Appeals require members to avoid ex parte communications while an appeal is pending. If members nevertheless receive one, the member needs to notify the Council's Chief Counsel or Executive Officer so that they may take appropriate measures (see para. 27).

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Council's Chief Counsel and Executive Officer immediately following receipt of the communication.

Winston, Alexandra

From: Bunting, Dennis W.
Sent: Friday, August 10, 2018 6:04 PM
To: Board of Supervisors - Announcements; 'jimzspering@cs.com'; Corsello, Birgitta E.
Cc: Huston, Nancy L.; Emlen, Bill F.; Goulart, Roberta L.; Darbinian, Azniv
Subject: Closed session --- Appeal Certification of Consistency
Attachments: Background DSC Appeal WaterFix. closed session 8.14.18.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Colleagues:

At our request, Roberta prepared the attached memorandum relating to an appeal of the Department of Resources' (DWR) Certification of Consistency.

We will seek a contribution of \$15,000 to join our fellow Delta County Coalition members, San Joaquin, Contra Costa and Yolo in retaining the Freeman and Soluri Meserve law firms to file an appeal --- they already represent us in the Waterfix CEQA and Validation actions.

San Joaquin County has the Freeman and Soluri Meserve legal firms under contract for this purpose. Contra Costa County's action will also take place on August 14. Yolo is also joining and Sacramento is pursuing an appeal separately through its retained counsel, so all of the Delta Counties are moving in the same direction.

This is a very technical appeal with many requirements that necessarily requires specialized legal assistance. And we are working with a very short time frame, less than 30 days.

We are not committing ourselves to litigating the outcome of the appeal.

Interestingly, the Delta Stewardship Council hears the appeal. Supervisor Thomson will hear the appeal, so he is limited in his participation in our discussions.

If you have any questions, please contact me or Roberta.

Dennis Bunting

Solano County Counsel

Office of the County Counsel
675 Texas Street
Suite 6600
Fairfield, CA 94533
Direct: (707) 784-6145
Fax: (707) 784- 6862
e-mail: DWBunting@solanocounty.com

Attorney-Client Communication - Do Not Disclose

The proposed California WaterFix Tunnels Project (WaterFix) is moving very quickly in securing final permit approvals, financing and other critical project elements before the end of this year. Among other approvals, the state must obtain a finding of consistency with the Delta Stewardship Council's Delta Plan. The Delta Stewardship Council (Council) was established as part of the 2009 Delta Reform Act to preserve and protect the Delta, establishing co-equal goals of providing water supply reliability and ecosystem restoration, while protecting the Delta as an evolving place. The legislation requires that covered actions (plans, programs or projects in the Delta and Suisun Marsh regulated by the Delta Plan or which affect the co-equal goals) be consistent with the Delta Plan.

The Stewardship Council process requires a certification of consistency to be submitted by the project or program proponent. The Council does not have approval authority over a covered action, but if the certification of consistency is appealed, the Council has appellate authority to determine whether the activity is consistent with the Delta Plan.

On July 27, 2018 the California Department of Water Resources submitted a written certification of consistency for WaterFix, determining that the project is consistent with the Council's Delta Plan. This began a 30-day period within which the County (or any person) may file an administrative appeal with the Council to challenge the certification of consistency. Appeals for WaterFix must be filed by August 27, 2018. Generally, the Council would hear an appeal within a 60-day period.

The County has asserted in other forums that WaterFix is inconsistent with the co-equal goals, the Delta Plan and state law. Specifically;

- WaterFix would not reduce reliance on the Delta in accordance with state law.
- WaterFix would not capture more water during wet periods and relies on increased exports during dry times when the Delta needs are greatest (does not achieve purported big gulp-little sip approach).
- WaterFix does not achieve the co-equal goals and will not protect the Delta ecosystem, species or the Delta as an evolving place.
- WaterFix does not mitigate significant impacts to water quality.

As you are aware, the Delta Counties Coalition has been active in opposing WaterFix. The other Delta counties (Sacramento, San Joaquin, Contra Costa and Yolo) are appealing; Sacramento using their outside counsel, and San Joaquin leading a joint appeal with the other Counties that Solano could also join. San Joaquin County has engaged the Freeman and Soluri Meserve legal firms that have represented Solano County and others in other WaterFix-related legal matters. An appeal by the County would preserve the right to sue the Council if necessary at a later date. This filing is more complicated than most but costs are not anticipated to be very high; current estimates are up to \$15,000 but would likely be less, given the number of parties involved.

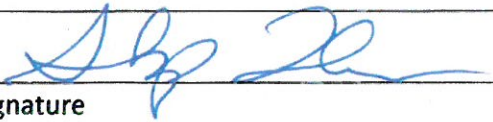
INADVERTENT EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by: SKIP THOMSON

- 1) Project (e.g. covered action): CA WaterFix
- 2) Date and time of receipt of communication: July 31, 2018 3:57 PM
- 3) Location and means of communication: Solano County email
- 4) Identity of person(s) initiating communication: Daniel M. Wolk - Dep
County Counsel - Solano County
- 5) Identity of person(s) on whose behalf communication was made: Solano County
Counsel's office
- 6) Identity of persons(s) receiving communication: Solano County Supervisor
Skip Thomson & Delta Stewardship Council member
- 7) Identity of all person(s) present during the communication: SKIP THOMSON

Describe the substance of the communication and any response (use extra pages if necessary; attach copies of any written communications and materials presented):

I was on vacation from July 19th thru
August 16th - while on vacation I received
this email. I did not open the
attachment.

8/27/18 
Date Signature

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From: Wolk, Daniel M.

Sent: Tuesday, July 31, 2018 3:57 PM

To: Brown, Monica E. <MEBrown@SolanoCounty.com>; Hannigan, Erin <EHannigan@SolanoCounty.com>; Spering, Jim P. <JPSpering@SolanoCounty.com>; Thomson, Skip <SThompson@SolanoCounty.com>; Vasquez, John M. <JMVasquez@SolanoCounty.com>; 'jimzspering@cs.com' <jimzspering@cs.com>

Cc: Bunting, Dennis W. <DWBunting@SolanoCounty.com>; Darbinian, Azniv <ADarbinian@SolanoCounty.com>; Huston, Nancy L. <NLHuston@SolanoCounty.com>; Emlen, Bill F. <WFEmlen@SolanoCounty.com>; Goulart, Roberta L. <RLGoulart@SolanoCounty.com>

Subject: Update on Delta Litigation

Members of the Board:

As you know, the County of Solano is directly engaged on three legal proceedings involving the California WaterFix, or Delta Tunnels, project. The attached memorandum is intended to provide you a brief update since we last reported on them at the May 1 Board meeting.

If you should have any questions, please let me know.

Thanks,

Daniel M. Wolk
Deputy County Counsel
Solano County
675 Texas Street, Suite 6600
Fairfield, CA 94533
Phone: 707-784-6150
Fax: 707-784-6862



OFFICE OF THE COUNTY COUNSEL
SOLANO COUNTY GOVERNMENT CENTER
675 TEXAS STREET, SUITE 6600
FAIRFIELD, CA 94533

MEMORANDUM

ATTORNEY-CLIENT PRIVILEGED

TO: Solano County Board of Supervisors
Birgitta E. Corsello, Solano County Administrator

FROM: Daniel M. Wolk, Deputy County Counsel *DMW*

DATE: July 31, 2018

RE: Update on Delta Litigation

As you know, the County of Solano is directly engaged on three legal proceedings involving the California WaterFix, or Delta Tunnels, project ("WaterFix"). This memorandum is intended to provide you a brief update since we last reported on them at the May 1 Board meeting.

1. Environmental Litigation

The County, and a number of other agencies, are challenging the California Department of Water Resources' (DWR) environmental review and approval of the construction and operations of WaterFix, based primarily on California Environmental Quality Act (CEQA) and the California Endangered Species Act (CESA). The lawsuit was filed in August 2017 and, along with a number of other similar lawsuits, has been formally "coordinated" with the Validation Action (below).

At this time, the parties are continuing to work on compiling the administrative record, a critical component of such lawsuits. This is expected to take a number of months.

As you may recall, the most contentious issue at this time is the "sequencing" of this litigation with the Validation Action. DWR argues that the Validation Action is extremely narrow in scope and should proceed first. The County and our allies, citing affirmative defenses in the Validation Action that touch upon CEQA and other statutes, takes the opposite view. The Court has yet to make a final determination on the matter.

2. Validation Action

A second major piece of litigation directly involving the County was filed by DWR in July 2017, seeking a judgment validating DWR's issuance of bonds to finance WaterFix. The County and a number of other agencies are opposing this action. As noted below, it has been formally coordinated with the Environmental Litigation.

At this point, the parties are at loggerheads concerning sequencing (see above), the contents of the administrative record, and discovery. The Court has yet to make any decisions on such matters.

3. State Water Resources Control Board Hearing

A final major legal proceeding directly involving the County is the petition filed by DWR and the federal Bureau of Reclamation to add three new points of diversion of water in the northern Delta associated with WaterFix. As required by law, the State Water Resources Control Board ("SWRCB") is holding an evidentiary hearing on the matter in order to decide whether to approve the joint petition and under what terms and conditions.

The "Rebuttal" stage of Part 2 of the hearing is set to begin August 2. The County, in partnership with Contra Costa County, recently filed rebuttal testimony by our expert, Dr. Richard Denton. The Rebuttal testimony builds on the County's Part 2 Case in Chief (and cross-examination of DWR's witnesses) that piqued the interest of the SWRCB's hearing officers. (That being said, Part 2 has been frustrating with controversial rulings favoring DWR.)

The Rebuttal stage is scheduled to last through the end of August and it is not clear how the SWRCB will proceed at that point, whether with "Sur-Rebuttal" (essentially, the "last bite at the apple"), closing briefs (and a decision), or perhaps a Part 3 of the hearing. The conventional wisdom is that the SWRCB is under pressure to make its decision on the joint petition by the end of the Governor's term in December.

4. Other Items of Note

Besides the three legal proceedings above, the County is closely monitoring the following:

- The federal FY 2018/19 Interior appropriations bill contains riders prohibiting the judicial review of WaterFix, among other things. Despite the opposition of both the County and even the State, an attempt by Congressman Garamendi to eliminate the riders was rebuffed and the bill was approved by the House. Our legislative advocates believe the best chance to defeat the riders is, and has always been, in the Senate. (The

opposition of the State is very interesting, given its strong advocacy for the WaterFix.)

- In May 2018, a coalition of environmental groups sued the Delta Stewardship Council (DSC) over its approval of amendments to the Delta Plan that are viewed as greasing the wheels for the DSC's eventual approval of WaterFix.
- As required by law, on July 27, 2018, DWR filed a "Certification of Consistency" with the DSC with findings that the WaterFix is consistent with the Delta Plan. Parties have 30 days (until August 26, 2018) to review and, if necessary, appeal the certification to the DSC. Any appeals must be heard by the DSC within 60 days of the date of filing.

This memorandum is intended to be a brief update of key proceedings. Should you wish to discuss anything further, please let us know.